

IN THE UNITED STATE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States District Court
Southern District of Texas
FILED

JUN 30 2017

David J. Bradley, Clerk of Court

NASER BINA

Plaintiff

C.A. NO. 4:17 – CV-00735

v.

ANTHEM LIFE INSURANCE COMPANY

Defendant

**NASER BINA MOTIONS TO BE AWARDED \$35,000.00 DOLLARS FOR LOST WAGES AND DAMAGES
CAUSED BY THE DEFENDANT AS RESULT OF BENEFIT DENIALS AND BRIDGE OF CONTRACT**

1. INTRODUCTION

Plaintiff has been denied short term disability as per contractual agreement between Plaintiff and the defendant in this case Anthem Life Insurance Company. Plaintiff has paid short term and long term disability insurance premium on biweekly bases since January 1, 2016 deducted from plaintiff paychecks. Appendix A

Disability Insurance benefit was provided by Plaintiff employer. The benefit was to provide income in case of surgery hospitalization or illness. Short term disability has no pre-existing condition or certificate of Insurability required. See Appendix B

Short term disability contract promises to pay 60% of lost wages by the defendant Anthem Insurance Company as result of accident and/or illness. Plaintiff was hospitalized on June 7, 2016 due to needed surgery on the right foot. This illness was caused suddenly and inexpertly on the right foot without prior complications or warning. Initial surgery was to be followed by at least 6 to 9 month of complete immobilization no work or walking or standing up permitted. See Appendix C

Anthem Life has refused paying the benefit due Plaintiff. Reason for denial has been listed below:

Letter dated July 25 Benefit denied due to lack of "certificate of Insurability". See Appendix D

On September 1, 2016 following Plaintiff appeal, the defendant **changed** the reason to deny to “you did not elect coverage until January 1, 2016” the defendant wanted to know why I did not choose coverage **sooner**. This ruling by the defended was objected by Plaintiff due to convincing fact that “Plaintiff has enrolled into policy when first became eligible and enrollment took place during Yearly **OPEN ENROLLMENT period**”. The defendant agreed and moved on to another excuse. See Appendix E

On January 18, 2017 Anthem Life denied benefit again for totally new reason, this time the defendant stated PRE-EXISTING condition. See Appendix F

Plaintiff illness cause was and still is UNKWOUN, condition resembles condition caused by Charcot Foot. This condition is **sudden and unexpected** illness seen in patients with uncontrolled Diabetes, lack of circulation of blood, drinking too much alcohol or Unexpected and unknown causes not yet determined by todays Medical scientists. See Appendix G

If it pleases the court to grant Plaintiff motion to be awarded \$35,000.00 dollars for lost wages, and causing Plaintiff to return to work prematurely without proper post-surgery recovery time ordered by attending physician.

II. AGREEMENT AND AUTHORITIES STANDARD

A. **STANDARD ON MOTION TO AWARD DAMAGES**

Plaintiff has kept his end of the bargain by entering into contract and has paid any and all required premiums. This contractual agreement was not honored by the defendant by refusing to pay benefits promised. The short term insurance policy must pay 60% of yearly income after two weeks of accident or illness. Calculation of benefit is as follow:

Yearly income	\$39,542.36	X 60% = \$23725.41
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CONCLUSION

The defendant has CHANGED the reason to deny benefits three times each time disregarding previously stated reasons to deny the benefit. The cause of illness was not due to preexisting condition as per attending physicians, the cause of illness was **Unexpected and sudden** therefore the benefit should have been approved and paid on timely manner as per agreement.

Date: 06/21/2017

Amended Complaint

Naser Bina

Plaintiff.

v.

Anthem Life Insurance Company

Defendant.

Case Number **4:17-cv-00735**

District Judge: Judge Keith P Ellison

Nature of Claim: Complaint NOS 110

**NASER BINA PLAINTIFF MOTIONS TO CORRECT THE DEFENDANT NAMED PREVIOUSLY LISTED AS
ANTHEM LIFE AND DISABILITY COMPANY TO BE CHANGED TO ANTHEM LIFE INSURANCE COMPANY**

Defendant name improperly listed as "Anthem life and Disability" in this case to be changed to its correct name "Anthem Life Insurance" company.

4455 SOUTH BLVD., SUITE 400
VIRGINIA BEACH, VIRGINIA 23452
PHONE (757) 490-3151

DATE:

4/21/2017

Negotiable***NonNegotiable**NonNegotiable**NonNegotiable**NonNegotiable**NonNegotiable**
DIRECT DEPOSIT ADVISE

NASER BINA
5135 W. HARROW DRIVE
HOUSTON TX 77084

THIS IS NOT A CHECK

50026 (11/06) 808106-1

EMPLOYEE ID	EMPLOYEE NAME	PERIOD END DATE	CHECK DATE	CHECK NUMBER	NET PAY			
38BN	NASER BINA	4/15/2017	4/21/2017	10179518	\$1,165.36			
EARNINGS	HOURS	CURRENT	YTD DEDUCTIONS	CURRENT	YTD TAXES	CURRENT	YTD	
Salary			\$1,216.35	Child Support	\$211.85	\$1,271.10	FIT	\$0.00
Holiday			\$456.17	Life Ins	\$0.90	\$7.20	Medicare	\$179.47
Hours	80.00	\$1,520.80	\$10,331.94	LTD Ins	\$13.96	\$111.68	Social Security	\$767.41
OT			\$220.99	STD Ins	\$12.39	\$99.10		
Sick			\$152.08					
TOTAL GROSS PAY		\$1,520.80	\$12,377.53					

TECHNICAL EDUCATION SERVICES INC

APPendix A

Rick Bina

From: Irene Graham
Sent: Tuesday, September 06, 2016 3:41 PM
To: Rick Bina
Subject: RE: Short/Long term disability insurance benefit

Hello Rick,

~~I am trying to get some clarification from Ms. Williams. We had an Open Enrollment for 1/1/16, so no Evidence of Insurability form should have been required from any of our employees enrolling at that time. What may come into play in your case, would be the potential for a pre-existing exclusion. If this is the case, and they determine that the disability is pre-existing, it may not be covered.~~

I will get back with you once I get some clarification from Ms. Williams.

Irene Graham
Centura College & Aviation Institute of Maintenance
4455 South Boulevard, Suite 410
Virginia Beach, VA 23452
(757) 490-3151 (phone)
(757) 337-5624 (fax)

From: Rick Bina
Sent: Tuesday, September 06, 2016 3:41 PM
To: Irene Graham <ibelzer@centura.edu>
Subject: Short/Long term disability insurance benefit

Hello

I received a call from Anthem Insurance co. caller was Mrs. Treasa Williams @ 800-232-0112

My short term claim was declined due to "lack of certificate of insurability" which must have provided at the time of signing for the benefit on Jan. 1st 2015. Not sure why I am the only applicant required to do so, and why I was never notified by Anthem to begin with?

My question is why was I required to provide certificate of insurability, but not being notified of such requirements? she said employer must have done that.

My 2nd question is can I have all fees deducted from paycheck be refunded??

My 3rd question is can you **cancel** this short/long term benefit immediately since there are no coverage available to me? and deduction continues.



Rick Bina | Admissions
Aviation Institute of Maintenance – Houston Campus
7651 Airport Blvd. Houston, TX 77061 (713) 644-7777
Fax: (713) 644-0902 | Toll Free: (800) 776-7423



[AIM Houston Facebook](#) | [AIM Houston Campus Site](#)

Appendix B

BC85@Fondren.com

Rick Bina

From: Irene Graham
Sent: Tuesday, November 08, 2016 10:24 AM
To: Rick Bina
Subject: FW: ST disability - Anthem life

Hello Rick,

~~The EOI (Evidence of Insurability) they are referring to comes back to initial denial due to proof of insurability. Anthem is agreeing that it was Open Enrollment, and that no EOI (or proof of insurability) was required, therefore the initial denial for that reason was not valid. What the carrier is stating now is that they have requested additional information which has not been received. This is generally notes from your physician. The deadline to complete this claim has not expired, but I would advise to contact the carrier to determine what information they are missing so they may complete your claim. They will not discuss it with me due to HIPAA.~~

Irene Graham
Centura College & Aviation Institute of Maintenance
4455 South Boulevard, Suite 410
Virginia Beach, VA 23452
(757) 490-3151 (phone)
(757) 337-5624 (fax)

From: Rick Bina
Sent: Monday, September 12, 2016 10:57 AM
To: Irene Graham <ibelzer@centura.edu>
Subject: ST disability - Anthem life

Hello

I have received a letter From Anthem life, deny few weeks of short term disability. Here is what they say

The short term disability policy with employment services became effective January 1, 2015, However you did not elect coverage until Jan. 1, 2016 which is more than 31 days after your eligibility waiting period. If you complete and sign application for ST Disability after 31 day eligibility waiting period you must provide proof of Insurability.

I enrolled on Jan 1, 2016 along with all my coworkers during Open enrollment period allowed By employer, during 9 month premium paid and no certificate of insurability was never requested

Please help clarify this as it may drag into legal actions.



Rick Bina | Admissions
Aviation Institute of Maintenance – Houston Campus
7651 Airport Blvd. Houston, TX 77061 (713) 644-7777
Fax: (713) 644-0902 | Toll Free: (800) 776-7423

Appendix B

Rick Bina

From: Irene Graham
Sent: Tuesday, November 08, 2016 7:23 AM
To: Rick Bina
Subject: FW: Claim Status

Hello Rick,

Please see the note from our short term disability carrier below. We have been working on this since your claim was first denied, due to their stating you needed an Evidence of Insurability form completed at enrollment. As you can see from the note below, they agree that no EOI was required, and you were told that in error. As for the additional information that is needed, this is generally medical documentation from your physician. Due to HIPAA protections, they generally will not discuss very much of an employee's claim with me (other than denial or approval). Please give the carrier a call to determine what additional information is need to reopen your claim at this time.

Please let me know if you have any questions.

Thanks,

Irene Graham
Centura College & Aviation Institute of Maintenance
4455 South Boulevard, Suite 410
Virginia Beach, VA 23452
(757) 490-3151 (phone)
(757) 337-5624 (fax)

From: Williams, Tresa [mailto:tresa.williams@anthem.com]
Sent: Monday, November 07, 2016 1:19 PM
To: Irene Graham <ibelzer@centura.edu>
Subject: RE: Claim Status

Hello Irene,

I have pulled the claim for Mr. Bina and the claim remains closed due to requested information needed to complete the claim review not received. We were able to confirm that EOI was not needed based on information received from account manager. However, there was information requested that has not been received to date.

Tresa Williams
Disability Case Manager II
Atlanta Disability Service Center
P O Box 105426
Atlanta, GA 30348-5426
1-800-232-0113 ext 1021350254
Fax 1-800-850-0017

Appendix B

You may also log in at www.anthem.com to find other ways you may decrease your deductible by utilizing programs for health condition maintenance, pregnancy, smoking cessation, or just by completing a health survey.

If you are currently enrolled in either plan, and want to remain in the same plan, you do not need to do anything. If you want to make changes to your plan, you will need to complete a new enrollment form.

To help off-set the medical plan out-of-pocket deductible, we are also pleased to announce that we will be continuing the Voluntary Gap plan with no change in premiums. The Gap plan is a policy which will help pay your deductible for services received outside of your physician's office. There is a separate benefit for Inpatient and Outpatient services, and will cover all services except Office Visits, Prescriptions, and Mental/Nervous Disorders. There is no pre-existing exclusion on this plan and all premiums are deducted on a pre-tax basis. You must be enrolled in one of the medical plans available in order to be eligible for this benefit, and you must complete a separate enrollment form as this is a Voluntary benefit and not provided by Anthem BCBS. You will not be automatically enrolled in this Plan if you elect Medical insurance. Premiums for this benefit are listed on the last page of this letter.

You have been hearing a lot about the Affordable Care Act (ACA - Obamacare), and the insurance Marketplace that you may go through to obtain affordable medical insurance. The plans we offer more than meet the standard benefits offered on the Marketplace, and in most cases are less expensive as you may not be eligible for a subsidy based on your household income. For more information on the Marketplace, please view the notice on the HR intranet. **In order to ensure we are meeting your insurance, and our ACA compliance, needs we are asking all eligible employees who are not enrolling in the medical plan to complete a Medical Waiver form.**

We are also pleased to announce that we will be continuing our Life, Short Term Disability & Long Term Disability insurance through Anthem BCBS. There will be no changes to the benefits or the premiums for 2016 (except for age or salary change). **If you are currently enrolled in the Life, Short- or Long-Term Disability insurances, you will not need to complete a new enrollment form. If you want to add any of these benefits, you will need to complete an enrollment form. This is the last year these benefits will have an Open Enrollment.**

Open Enrollment is your opportunity to enroll in the Medical, Dental, Life, Short Term Disability, or Long Term Disability insurance if you had waived it in the past. Open Enrollment is the one time each year all eligible employees may enroll into the insurance plans and be accepted with no questions asked. To be eligible at any other time of the year, you must have a qualifying event. Medical, Life & Disability insurance is available to all full-time employees, and their families, the first day of the month following 60-days of continuous full-time employment. Full-time employees are defined as working 30 hours per week for insurance benefit purposes. Dental insurance is available to all employees working a continuous schedule regardless of the number of hours worked. For more information on the benefits, please refer to the HR Documents section of the intranet. You may also contact me any time at (757) 490-3151, or jgraham@centura.edu.

More information on these new and ongoing benefits, will be made available to you at your campus Open Enrollment meeting. We will be having 2 Open Enrollment meetings at the Corporate Offices on Tuesday 11/17/15, in the 2nd Floor Conference Room at 9 am & 10 am. Sam Slagle and Chris Lyon, from the Frieden Agency, will be there to answer any questions you may have. I encourage everyone to attend. For all those unable to attend, you may call either me at (757) 490-3151, or Sam Slagle & Chris Lyon at (757) 340-9777, with any questions you have.

Sincerely,

Irene Graham
Benefits Administrator

Appendix B



Aviation Institute
of Maintenance

Corporate Headquarters

4455 South Boulevard, Suite 250 • Virginia Beach, VA 23452

Phone: (757) 456-5065 • Fax: (757) 497-6503

Toll Free: (877) 604-2121

November 2, 2015

All Eligible Employees
Employment Services Benefit Program
RE: Benefit Open Enrollment

Handwritten notes: LT \$3450, ST \$750, 19.30, 18.35, 2 weeks

Dear Employee,

Please read this entire letter as you may need to complete enrollment forms even if you are currently enrolled in any plan (Medical, Dental, Life, or Disability). All forms must be returned to your CED by no later than 12/9/2015 to ensure timely enrollment and payroll deductions.

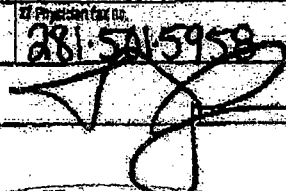
As you may know, January 1st is Open Enrollment for our various benefit plans. At this time every year, insurance companies evaluate our group to determine our insurability and at what cost. We in turn review the options available to us, looking at the coverage as well as the cost to you, to determine the best benefit for you, your family and our company.

Over the past five years, when many companies have been seeing large increases to their premiums, we have been fortunate to average a 3.5% increase per year, by adjusting benefits and adding plans. Unfortunately, due to high claims utilization in 2015 and administrative costs associated with the Affordable Care Act, Anthem has presented us with an increase of 21.4% for 2016.

We have elected to make no changes to the plans offered for 2016. The HRA PPO plan with a \$3,000 individual deductible, and the HRA PPO plan with a \$5,000 individual deductible, and lower premiums. When reviewing our plans for renewal, Anthem determined that 26% of our employees still have employer dollars in their account from 2015, making the higher-deductible/lower-premium plan an opportunity for some of our employees to save money. Please see the chart on the last page for the premium amounts which will be effective on the January 15, 2016 paycheck. Costs are listed per pay period. (Note: Due to the first paydate of 2016 falling on 1/1/16, employee will be paid 12/31/15. If you currently participate in any of the insurance plans, all premiums will be suspended for the 12/31/15 paycheck.)

Some highlights of the plans:

- All plans will allow you to visit any participating doctor you choose without a referral.
- 100% coverage for medical care after the annual deductible is met for all services other than wellness (including Prescriptions):
 - The current plan deductibles are \$3,000 (individual), and \$6,000 (family), and \$5,000 (individual) and \$10,000 (family) depending on plan selected.
- Once the deductible is met, Prescriptions will move to a co-payment, tiered plan.
- Wellness visits covered at 100% with no cost to you or your HRA balance.
- The first \$1,000 (individual) and \$2,000 (family) claims will be billed to, and paid by, our company.
- The Employer balance you have available in your HRA account at the end of the year will also roll into next year (up to a maximum of \$2,000/\$4,000) which, when added to the \$1,000/\$2,000 for 2016, could significantly reduce any out-of-pocket expenses you may have next year.

SECTION II TO BE COMPLETED BY PHYSICIAN			
<p>Name of Physician:</p> <p>Completion of this form will assist your patient in presenting claims for group and/or individual disability benefits. Please complete all areas of this form. If a section is not applicable, please enter N/A in the response area.</p>			
1. Patient's last name Bina		2. Patient's first name Naser	
3. Current diagnosis Right Foot Charcot		4. ICD-9 code (ICD-10) M14.671	
5. Subjective findings Bilateral foot Charcot		6. Objective findings Bilateral foot Charcot	
7. Has patient ever had carpal or similar condition? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, please specify dates of treatment:		8. Is patient currently or has been out of work in course of employment for wages or profit? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknow If yes, please explain:	
9. Is disability due to pregnancy? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, LMP (month/day/year):		10. Type of delivery: <input type="checkbox"/> Vaginal <input type="checkbox"/> Section	
11. Was patient hospitalized? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide dates of hospitalization and name of hospital treating: @ The Texas Orthopedic Hospital		12. Nature of surgical procedure, if any. (Describe in full) Right Charcot foot reconstruction with partial fusion, Bone graft	
13. Date of present visit (month/day/year) 7.7.16		14. Date of next visit (month/day/year) 6.14.16	15. Date of last visit (month/day/year) 6.14.16
16. Patient's present condition: <input type="checkbox"/> Recovering <input type="checkbox"/> Improved <input checked="" type="checkbox"/> Unchanged <input type="checkbox"/> Regressed		17. Frequency of visits: <input type="checkbox"/> Weekly <input checked="" type="checkbox"/> Monthly Other: _____	
18. Treatment plan Surgery 7.7.16			
19. Functional requirements After surgery Non weight bearing on Right Foot		20. Current medications and dosages Pain meds after surgery: Norec	
21. Has patient returned to return to work? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes: <input type="checkbox"/> Full time, no restrictions; <input type="checkbox"/> Part time, no restrictions; <input type="checkbox"/> Light duty (Please specify restrictions, restrictions, hours, graduated return to work schedule, etc.) Date returned to light duty (month/day/year):			
22. Is patient a suitable candidate for a rehabilitation program? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
23. Is your practice currently able to oversee, create and direct the process thereof? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, please attach supporting documentation.			
24. Physician printed last name Bloome		25. Physician first name David	
26. Physician street address 7401 S. Main		27. City Houston	
28. Physician phone no. 713-799-2300		29. Physician fax no. 281-501-5958	
30. Physician email address		31. Physician email address	
Signature of physician 		Date (month/day/year) 6.30.16	

06/29/2016 12:55PM (GMT-05:00)

Appendix C

Anthem Life Insurance Company
Disability Service Center
P.O. Box 105426
Atlanta, GA 30348-5426
Tel 800-813-5682
Fax 800-850-0017

Anthem Life

July 25, 2016

Naser Bina
5135 W Harrow
Houston, TX 77084

Re: Employment Services, Incorporated.
Claim #: ST00292917

Dear Mr. Bina:

Anthem Life Insurance Company received your short term disability claim beginning July 01, 2016. Please see the following policy provisions:

Benefits are not payable for loss resulting from: Pre-existing conditions or diseases during the first twelve months after the effective date of coverage.

A "Pre-Existing Condition" means a condition: (a) for which symptoms existed which would cause an ordinary prudent person to seek diagnosis, care or treatment within a one year period preceding the effective date of coverage; or (b) for which medical advice or treatment was recommended by a physician within a one year period preceding the effective date of coverage. Treatment means consultation, care or services provided by a physician including diagnostic measures and taking prescribed drugs and medicines.

Since this policy has a pre-existing provision and as of the date of disability you have not been covered under the policy for twelve months, we must obtain additional information if order to determine if you are eligible for benefits. We wrote to Dr. David Bloome for additional medical information. **However, we need the following information from you:**

APPENDIX D

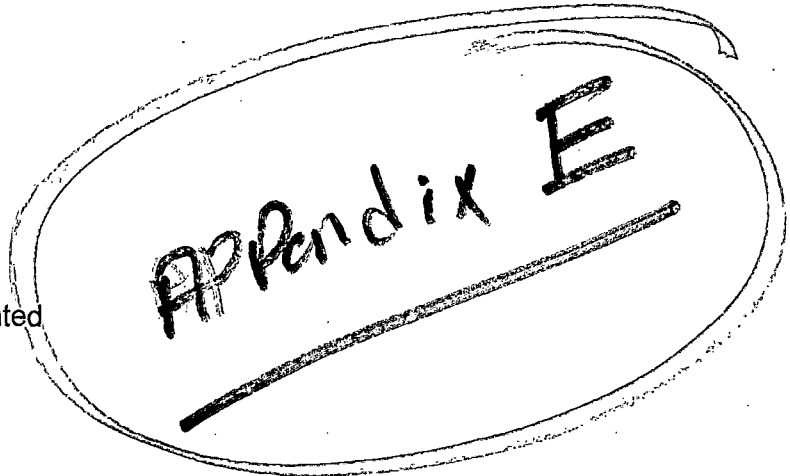
Anthem Life Insurance Company
Disability Service Center
P.O. Box 105426
Atlanta, GA 30348-5426
Tel 800-813-5682
Fax 800-850-0017

AnthemLife

September 1, 2016

Naser Bina
5135 W Harrow Drive
Houston, TX 77084

Re: Employment Services Incorporated
Short Term Disability
Group: 425600V-0000AL0000
Claim Number: ST00292917



Dear Mr. Bina:

Your Short-Term Disability insurance is designed to provide you with disability benefits as long as you remain disabled in accordance with the provisions shown in your benefit booklet or certificate of insurance. Please refer to your benefit booklet or certificate of insurance for a complete outline of your benefits.

We have completed our review of your Short Term Disability claim and regret to inform you that your request for disability benefits has been denied.

Our decision to deny benefits is based upon Employment Services Incorporated Short Term Disability policy which states:

Once You have become eligible for insurance, this section tells when Your insurance will begin.

Your insurance will begin on the first day of the Policy month coinciding with or next following the date You become eligible for such insurance.

If You Sign the form more than 31 days after You became eligible, Your Contributory insurance will be deferred until the date We approve Your Written Proof of Insurability.

If You are required to give Proof of Insurability for all or a portion of Your insurance, that insurance for which Proof of Insurability is required begins on the date We approve, in Writing, Your Proof of Insurability.

The Short-Term Disability policy with Employment Services Incorporated became effective January 1, 2015, however, you did not elect coverage until January 1, 2016; which is more than 31 days after your eligibility waiting period. If you complete and sign the application for Short-Term Disability coverage after the 31 day eligibility waiting period you must provide Proof of Insurability. According to the information that we have on file a Proof of Insurability was not submitted, therefore, you are not eligible for Short-Term Disability benefits.

Page 2 of 2

This letter is not in prejudice to any of this company's other rights and defenses under this policy.

If you disagree with our determination, in whole or in part, the Employee Retirement Income Security Act of 1974 (ERISA) provides you with the right to an appeal. You or your representative must submit your request in writing within 180 days of receipt of this letter. Your request should clearly state your position and should include any other documents, records or information in support of your appeal. You may also request, at no charge, reasonable access to, and copies of all documents, records and other information relevant to your claim.

Please send all requests to:

Attn: Appeals Coordinator
Disability Claims Service Center
P.O. Box 105426
Atlanta, GA 30348-5426

You also have the right to bring action in federal court under ERISA Section 502(a) if you file an appeal and your request for benefits is denied following our review.

If it is your intent to appeal this decision, we suggest you provide the following information:

- Medical evidence, which has not already been submitted, including any examination reports, office progress notes, hospital records, psychiatric evaluation, psychological therapy treatment notes, medical records and/or testing from a specialist which documents abnormal findings with medical rationale explaining why you are unable to perform your essential job duties on a full time basis beginning December 16, 2015 to the present.

Should you have any questions, you may contact me at 1-800-232-0113.

Sincerely,

Tresa Williams

Tresa Williams
Disability Case Manager II

Anthem Life Insurance Company
Disability Service Center
P.O. Box 105426
Atlanta, GA 30348-5426
Tel 800-232-0113
Fax 800-850-0017

AnthemLife

January 18, 2017

Naser Bina
5135 West Harrow Drive
Houston TX 77084

APPENDIX
F

VIA UPS EXPRESS

**RE: Employment Services Inc. Voluntary Short Term Disability (VSTD) Plan
Claim Number: ST00292917**

Dear Mr. Bina:

Your request regarding the denial of benefits, under the Employment Services Inc. Voluntary Short Term Disability (VSTD) Plan was received in our office on December 28, 2016.

The policy states:

Pre-Existing Condition Exclusion

No amount of Voluntary Short Term Disability Benefit will be payable for any Disability which is caused by, contributed to by, or resulting from a Pre-Existing Condition.

A Pre-Existing Condition is an injury or illness for which You did any of the following within 3 months prior to the date on which You became insured under the Policy whether or not that condition is diagnosed at all or misdiagnosed during that period of time:

1. visited or consulted a Physician, Hospital or Medical Facility or
2. took clinical tests or received treatment. This includes (but is not limited to) taking pills, injections or other medication to treat any condition.

This exclusion will not apply if the Elimination Period for the Disability begins after You have been insured under the Policy for at least 12 months.

On November 9, 2016 our office received your request for appeal/reconsideration. On December 21, 2016 we completed the appeal review of your claim and determined that the claim was not eligible for benefits, since your diagnosis of right foot charcot was due to a pre-existing condition and the plan specifically excludes any illness and/or injury caused, contributed to by, or resulting from a pre-existing condition. In your correspondence, received on December 28, 2016, you demanded the sum of \$35,000.00 be paid to you within ten business days. Based upon the review of the clinical documentation and the policy, the claim documentation does not support eligibility for benefits, as indicated by the Plan. Therefore, we are unable to grant/issue any payment. Please refer to the appeal determination letter, dated December 21, 2016, for further details on your available options.

Naser Bina
January 18, 2017
Page 2 of 2

If you have any questions or concerns regarding the decision on appeal, please contact me at 1-800-232-0113, extension 1021355153.

Sincerely,

A handwritten signature in black ink that reads "Nadine Scott". The signature is written in a cursive style with a large, looped initial "N".

Nadine Scott
Quality Management Specialist/Appeal Coordinator

FootCareMD

A step in the right direction

Charcot Arthropathy

What is it?

Charcot arthropathy, also known as Charcot foot and ankle, is a syndrome in patients who have neuropathy or loss of sensation. It is characterized by fractures and dislocations of bones and joints that occur with minimal or no known trauma.

Symptoms and Clinical Presentation

Initially, there may be swelling, redness and increased warmth of the foot and ankle. Later, when fractures and dislocations occur, there are severe deformities of the foot and ankle, including collapse of the midfoot arch (often called rocker bottom foot) or instability of the hindfoot. The syndrome progresses through three general stages:

- **Stage 1** (acute, development-fragmentation): marked redness, swelling, warmth; early radiographs show soft tissue swelling, and fragmentation and joint dislocation may be noted several weeks after onset
- **Stage 2** (subacute, coalescence): decreased redness, swelling and warmth; radiographs show early bony healing
- **Stage 3** (chronic, reconstruction-consolidation): redness, swelling, warmth resolved; bony healing or nonunion and residual deformity frequently present.

Cause (including risk factors)

Charcot foot occurs in patients with peripheral neuropathy resulting from diverse conditions including diabetes mellitus, leprosy, syphilis, poliomyelitis, chronic alcoholism or syringomyelia. Repetitive microtrauma that exceeds the rate of healing may cause fractures and dislocations. Changes in circulation may cause resorption of bone, weakening the bone and increasing susceptibility to fracture and dislocation.

Anatomy

Charcot arthropathy may affect any part of the foot and ankle, including (in decreasing order of frequency) the midfoot, hindfoot, and forefoot. Multiple regions may be involved concurrently. Fractures and dislocations frequently involve several bones and joints, with fragmentation and deformity.

Diagnosis

Time between onset of symptoms and diagnosis may be several weeks or months. Delay in diagnosis may or may not affect the outcome because gross instability may occur even if prompt diagnosis is made. Diagnosis is based on a high index of suspicion for this problem in patients with neuropathy. Increased redness, swelling and warmth may be the only early signs. Some patients have pain. Early radiographs may show soft tissue swelling with no bony changes, but repeat radiographs several weeks later may show bone and joint changes.

Treatment Options

Non-Surgical: Non-operative treatment includes a protective splint, walking brace, orthosis or cast. Early weightbearing is allowed by 41 percent of specialists and in stage 2 by 49 percent of specialists, and other specialists recommend non-weightbearing. After healing is noted in stage 3, treatment includes accommodative footwear with protective orthoses.

Surgical: Selected patients with instability in the early stages may be treated with open reduction and internal fixation and fusion. In later stages, surgical options may include realignment osteotomy and fusion (correction of deformity) or ostectomy (removal of bony protrusion that could cause an ulcer).

Recovery

Healing may require several months. Healing times after surgery may be twice the usual duration than for a non-diabetic foot. With the foot and ankle, healing after fusion may require six months of protection and subsequent orthoses.

Outcome

Charcot foot and ankle may recur or flare up. Furthermore, bilateral involvement is common. Therefore, impairment with this condition is permanent. Patients use protective footwear and orthoses, and limit standing and walking to that required for activities of daily living. Lifelong follow-up is required with a specialist.

Complications

Severe deformities may include collapse of the midfoot arch (called rocker bottom foot) with associated plantar midfoot ulcer. Deformities

APPENDIX
G

occur in any part of the foot and ankle and result in ulcers from bony pressure against the shoe or ground; ulcers may become infected. Infections may be limb- and life-threatening. Some Charcot joints, such as the ankle, may heal with fibrous tissue (non-union) and then result in gross instability ("floppy foot") that may predispose to ulcers and may be difficult to support with braces.

Frequently Asked Questions

Why is it common for there to be a delay between onset of signs and diagnosis of Charcot foot?

The initial signs of Charcot foot are non-specific and are more typically seen in other more common conditions such as infections or rheumatologic conditions. Many patients do not have pain or have pain from neuropathy that was preexisting. Physicians who are not specialists in orthopaedic foot and ankle problems may see a Charcot foot very few times in an entire career, less frequently than other conditions such as septic arthritis, gout, rheumatoid arthritis and other inflammatory arthropathies.

Does a delay between onset of signs and diagnosis worsen the prognosis?

Not necessarily. Some cases of Charcot arthropathy become unstable in the very early stages and have destabilized before the patient sees the doctor. Other cases may destabilize even if the foot and ankle are optimally protected early in the course of the problem. Early protection may help decrease risk of further instability in some patients, but instability might occur despite early protection. The massive bony fragmentation may cause instability very differently than a fracture resulting from trauma in a non-neuropathic patient.

Additional Resources

[Diabetic Foot Overview](#)

[How to Care for Your Diabetic Feet](#)

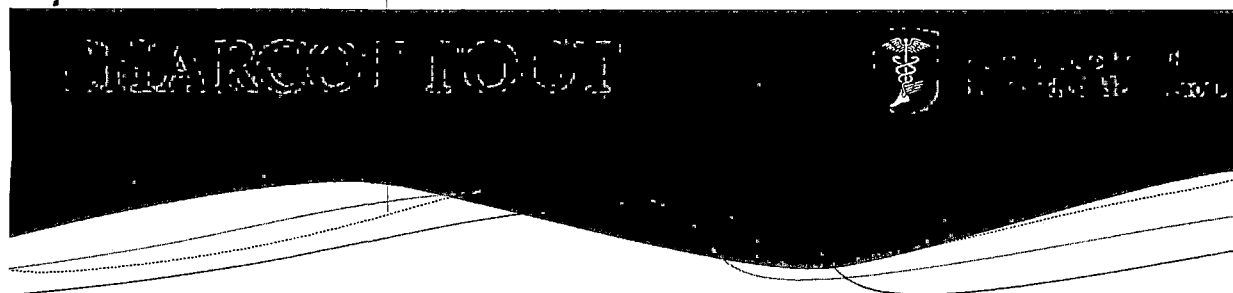
[Diabetic Foot Problems](#)

[Shoes and Orthotics for Diabetics](#)

[Foot Ulcers and the Total Contact Cast](#)

[The Diabetic Foot and Risk: How to Prevent Losing Your Leg](#)

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What Is Charcot Foot?

Charcot foot is a sudden softening of the bones in the foot that can occur in people who have significant nerve damage (neuropathy). The bones are weakened enough to fracture, and with continued walking the foot eventually changes shape. As the disorder progresses, the arch collapses and the foot takes on a convex shape, giving it a rocker-bottom appearance, making it very difficult to walk.

Charcot foot is a very serious condition that can lead to severe deformity, disability, and even amputation. Because of its seriousness, it is important that patients with diabetes—a disease often associated with neuropathy—take preventive measures and seek immediate care if signs or symptoms appear.

Symptoms

The symptoms of Charcot foot can appear after a sudden trauma or even a minor repetitive trauma (such as a long walk). A sudden trauma includes such mishaps as dropping something on the foot, or a sprain or fracture of the foot. The symptoms of Charcot foot are similar to those of infection. Although Charcot foot and infection are different conditions, both are serious problems requiring medical treatment.

Charcot foot symptoms may include:

- Warmth to the touch (the foot feels warmer than the other)
- Redness in the foot
- Swelling in the area
- Pain or soreness

What Causes Charcot Foot?

Charcot foot develops as a result of neuropathy, which decreases sensation and the ability to feel temperature, pain, or trauma. When neuropathy is severe, there is a total lack of feeling in the feet. Because of neuropathy, the pain of an injury goes unnoticed and the patient continues to walk—making the injury worse.

People with neuropathy (especially those who have had it for a long time) are at risk for developing Charcot foot. In addition, neuropathic patients with a tight Achilles tendon have been shown to have a tendency to develop Charcot foot.

Diagnosis

Early diagnosis of Charcot foot is extremely important for successful

treatment. To arrive at a diagnosis, the surgeon will examine the foot and ankle and ask about events that may have occurred prior to the symptoms.

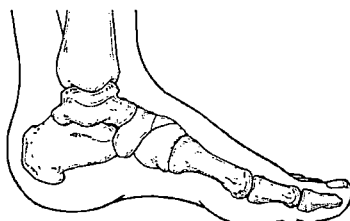
X-rays are also essential for diagnosis. In some cases, other imaging studies and lab tests may be ordered. Once treatment begins, x-rays are taken periodically to aid in evaluating the status of the condition.

Treatment

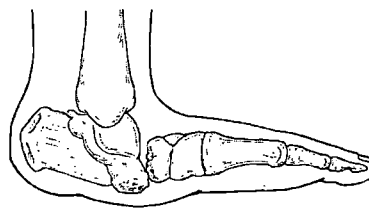
It is extremely important to follow the surgeon's treatment plan for Charcot foot. Failure to do so can lead to the loss of a toe, foot, leg, or life.

Treatment for Charcot foot consists of:

- **Immobilization.** Because the foot and ankle are so fragile during the early stage of Charcot, they must be protected so the soft bones can repair themselves. Complete non-weightbearing is necessary to keep the foot from further collapsing. The patient will not be able to walk on the affected foot until the surgeon



Normal Foot



Charcot Foot

Appendix G

NIZAR A. DHOLAKIA, M.D.

6560 Fannin Street, Suite 2202
Houston, Texas 77030-2734
Telephone: (713) 526-5955
Fax: (713) 795-5421

October 13, 2016

To Whom It May Concern,

We are currently treating Naser Bina for a severe right foot infection. He is receiving IV antibiotics and will need to be admitted into the hospital on Friday October 14, 2016. He is going to need to have surgery on his infected foot and continue the IV treatment that he has been given. He will be in the hospital for about a week, if not a little longer than that based upon his recovery and response to the antibiotics.

If you have any further questions or concerns, please feel free to contact the office and we would be more than happy to assist you as best as we can.

Sincerely,



Nizar A. Dholakia M.D. , P.A.

Short Term Disability Claim Form

Anthem[®]Life**IMPORTANT NOTICE TO EMPLOYEE - PLEASE READ CAREFULLY**

You or someone acting on your behalf should complete Section I and then have your employer complete Section II. Have your physician complete Section III within ten days. After all three sections are completed, submit the form to us at the address or fax number listed below. Your cooperation will facilitate payments promptly when they are due.

Any person who knowingly, and with intent to defraud any insurance company, files a statement of claim containing any false, incomplete or misleading information may be subject to criminal penalties.

SECTION I: TO BE COMPLETED BY THE EMPLOYEE

1a Employee last name BINA		1b Employee first name NASIER		MI	2 Marital status <input type="checkbox"/> Single <input checked="" type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed	3 Gender <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	4 Birthdate (mm/dd/yyyy) [REDACTED]
5a Employee street address 5135 W. Harrow DR.				5b City HOUSTON		5c State TX	5d ZIP code 77084
6 Phone no. 832-885-6680	7 Cell no.	8 Fax no.	9 E-mail address RICKBINA@yahoo.			10 Social Security no. [REDACTED]	
11 Date you last worked due to your disability (mm/dd/yyyy) 7-6-2016			12 Date you returned to work (mm/dd/yyyy)		13 If not yet returned, date you expect to return (mm/dd/yyyy) TBD		
14 Disability due to: <input checked="" type="checkbox"/> Illness <input type="checkbox"/> Injury - Type: <input type="checkbox"/> Auto <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Home <input type="checkbox"/> Other If due to injury, please provide complete details to accident, date and time (attach a separate sheet if necessary):							

15 Employer name

Aviation Institute of Maintenance

I authorize the release to or by Anthem Life Insurance Company (Anthem Life) any medical or insurance information required to process my claim. I understand that any information obtained pursuant to this authorization will be used only to evaluate my claim and may be transferred to any organization or person employed by or representing Anthem Life to assist with this purpose. This authorization is valid for the duration of my claim. I understand I have a right to request and receive a copy of this authorization. A photocopy of this authorization is as valid as the original.

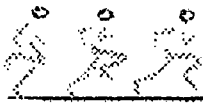
The above statements are true and complete to the best of my knowledge and belief. (Your signature is required for benefit consideration.)

Employee Signature X	Date (mm/dd/yyyy) 4/23/16
--------------------------------	-------------------------------------

SECTION II: TO BE COMPLETED BY THE EMPLOYER

17 Group policy no.	18 Date employed (mm/dd/yyyy)	19 Effective date of insurance (mm/dd/yyyy)	20 Occupation/Job title	21 Standard no. of hours worked per week
22 Social Security no.	23 Employee no. (if applicable)		24 Employee benefit class	25 Amount of weekly benefits
26a Date employee last worked: _____ No. of hours: _____ <input type="checkbox"/> AM <input type="checkbox"/> PM		27 Employee's wage: \$ _____ per <input type="checkbox"/> hour <input type="checkbox"/> week <input type="checkbox"/> year <input type="checkbox"/> Hourly <input type="checkbox"/> Salaried		
26b Date employee scheduled to return to work: _____ <input type="checkbox"/> AM <input type="checkbox"/> PM				
26c Date employee returned to work: _____ <input type="checkbox"/> AM <input type="checkbox"/> PM				
28 Did injury or illness arise out of or in course of employment for wages or profit? <input type="checkbox"/> Yes <input type="checkbox"/> No		29 Is claim being made for Workers' Compensation? <input type="checkbox"/> Yes <input type="checkbox"/> No		
30 What percentage of the Short Term Disability premium does the employer pay? _____%		31 If the employee contributes to the premium, contributions are made: <input type="checkbox"/> Pre-Tax <input type="checkbox"/> Post-Tax		
32 Comments		33 Employee status on the last day worked or current employee status		
34 Insured group name	35 Branch or division address			36 Phone no.
37 Printed name of employer representative		38 Title		
39 Signature of employer representative X				40 Date (mm/dd/yyyy)

Anthem Life Insurance Company
Disability Claims Service Center
P.O. Box 105426
Atlanta, GA 30348-5426
Phone: 800-813-5682 Fax: 877-305-3901
E-mail: lifeanddisabilityclaims@anthem.com



FONDREN ORTHOPEDIC GROUP LLP - MAIN

7401 S. Main HOUSTON, TX 77030
(713) 799-2300 Fax: (713) 794-3380

May 6, 2016

Page 1

Chart Note

NASER BINA

Male DOB: [REDACTED]
902732

Home: (832) 885-6680

960792683-1-FOG Ins: UNITED HEALTH CARE Grp:

05/06/2016 - Chart Note: Work Note

Provider: TOMIKO FUKUDA MD

Location of Care: FONDREN ORTHOPEDIC GROUP LLP - MAIN

WORK or SCHOOL EXCUSE

Date 05/05/2016

Patient Name: NASER BINA

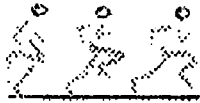
NASER BINA was in the office today

Restrictions: Patient is off work until further notice. Patient is strict non weight bearing in a cast.

Remarks:

Tomiko Fukuda, M.D., Orthopedic Surgeon

Electronically signed by Manuela Castaneda on 05/06/2016 at 8:45 AM



FONDREN ORTHOPEDIC GROUP LLP - MAIN

7401 S. Main HOUSTON, TX 77030
(713) 799-2300 Fax: (713) 794-3380

May 6, 2016

Page 1

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Electronically signed by Manuela Castaneda on 05/06/2016 at 8:45 AM

Naser Bina
5135 West Harrow Dr.
Houston, tx 77084
832-885-6680

11/2/2016

Anthem Life
ATTN: Appeals Coordinator
Disability Claim Service Center
P.O. Box 105426
Atlanta, Ga 30348

RE: Appeal Your decision dated Sep. 1, 2016

Dear Sir:

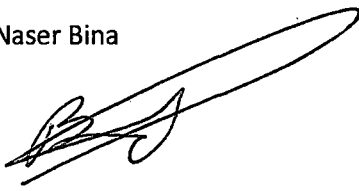
I would like to appeal your decision dated Sep. 1, 2016 denying my claim for disability. After reviewing this decision, I noticed that main reasons for denying this claim was due to the fact that I enroll in your program as late as Jan 1st 2016 Instead of Jan 1, 2015.

I must remind you that I enrolled within "Open enrollment" period allowed by my employer, therefore 2015 enrollment period I was too new with the company to enroll for disability qualification.

I am providing you with employer official letter to informing every one of "Open enrollment" policy and dates.

Please reconsider this decision. American with disability Act provides Punitive damages for those who are unjustifiably declined due benefits.

Naser Bina

A handwritten signature in black ink, appearing to be 'Naser Bina', written over a horizontal line.

Enclosure

Naser Bina
5135 West Harrow Drive
Houston, TX 77084

11/09/2016

Anthem Life
Appeals Coordinator
Disability claims center
Pox 105426
Atlanta Ga 30348

RE: Group 425600v=0000AL0000
Claim # ST00292917

I am disturbed and disappointment in regard to your decision of denied benefit dated Sep 1, 2016. This is a second letter of appeal requesting denial to be turned over.

Your initial finding of need for the "certificate of eligibility" was found incorrect by your insurance company on the ground that enrollment took place during "open enrollment" period therefore no Certificate of insurability required.

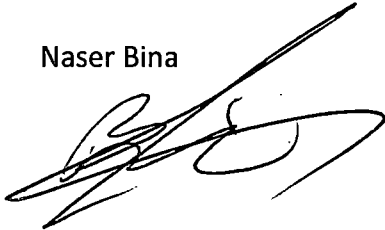
Now you are needing or requesting more medical information from Dr. Alani. I just talked to them, they pulled records find no one every requesting information from you or anyone else. My question is why requesting information after denying my benefit?? And why request for information has never been extended by you ??

Your denial of short term disability has forced me to return to work prematurely against physicians orders. I need income which you have denied me and my family, resulting in huge financial losses and risking my health , resulting in going back to work with open wounds and heavy bleeding in the right foot. As result, physician was forced to perform another surgery on 7/30/2016 and resulted in Hospital emergency room for 5 days just two weeks ago.

I respectfully demand full 6 month of short term disability benefit to be paid immediately, my current income is \$39,700 per year of which 60% must be paid by your insurance company.

Should you deny this demand request, I reserve the right to bring this case before jury of my peers demanding justice

Naser Bina

A handwritten signature in black ink, appearing to be 'Naser Bina', written in a cursive style.